In the High Court of Judicature at Madras

Dated: 07.12.2006

Coram:

The Honourable Mr.Justice P.SATHASIVAM

and

The Honourable Mr.Justice S.TAMILVANAN

Writ Petition No.5300 of 1998

K.Jayachandran ..Petitioner

..vs..

1. Deputy Inspector General,
   Southern Zone,
   Central Industrial Security Force,
   'D' Block, Rajaji Bhavan,
   Besant nagar,
   Chennai-90.

2. The Commandant,
   Central Industrial Security Force,
   Madras Port Trust,
   Chennai-600 001. ..Respondents

Writ petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for the records of the 1st respondent in its proceedings No.E 28014/GEN/96/A-4(SZ) Part/97 dated 13.02.1998, quash the same and direct the 1st respondent to treat the period of medical invalidation from 17.06.1993 to 01.12.1998 as period spent on duty with all consequential benefits.

WEB COPY

For Petitioner : Mr.Karthik Raja

For Respondents : Mr.S.Udayakumar,
SCGSC.,

https://hcservices.ecourts.gov.in/hcservices/

ORDER

(Order of the Court was made by P.SATHASIVAM,J.,)

Aggrieved by the proceedings of the 1st respondent dated 13.02.1998 rejecting the request of the petitioner, the petitioner has filed the above writ petition to quash the same and issue direction to the 1st respondent to treat the period of medical invalidation from 17.06.1993 to 01.12.1998 as period spent on duty with all consequential benefits.

2. The case of the petitioner is briefly stated hereunder:

(a) Petitioner was recruited as Security Guard in the Central Industrial Security Force (for short "CISF") on 15.10.1970. The same was re-designated as Constable. On completion of training he was posted to Cochin Port Trust and thereafter, he was transferred to various Units all over India. While working in the Fertiliser Corporation of India at Sindri in Bihar, he met with an accident; as a result of which, he sustained a fracture in the right elbow. He underwent medical treatment from time to time and he was operated upon, but it was no successful. Therefore, his hand movement was affected. The petitioner underwent further operation in the C.M.C.Hospital at Vellore and a steel plate was inserted in the elbow. As a result of which, hand movement became better and the petitioner resumed duty.

(b) On 11.05.1985, the petitioner was promoted as Naik and was also deputed to undergo promotion course on three occasions. On all the three occasions, he was found fit to take up the course. Petitioner has also expressed his willingness to undergo the course of indoor subjects. On a particular day, when the Commandant came to the Unit, the petitioner saluted him, but due to the difficulty in free movement of the right elbow, he could not raise his elbow fully. By order dated 26.09.1991, he was reverted to the substantive rank as Constable.

(c) Aggrieved by the said order, the petitioner preferred an appeal to the 1st respondent on 22.07.1991. However, the same was rejected on 10.11.1991. On 02.04.1992, the petitioner was again promoted as Landce Naik and was assigned to special armed duty training. Based on the Certificate issued by the Civil Assistant Surgeon, K.M.C.Hospital, Chennai, the petitioner submitted a representation to the Commandant on 30.06.1992 to assign light duties. On 01.10.1992, the petitioner was referred to the Medical Board and based on the legal report, by order dated 05.02.1993 he was medically invalidated with effect from 06.02.1993. Subsequently, the Commandant cancelled the earlier order dated 05.02.1993. In the meanwhile, on 28.01.1993, the petitioner underwent another operation in the elbow in the C.M.C.Hospital at Vellore and the steel plate was removed and the arm movement became almost normal. On that basis, the petitioner made a representation for implementation of the promotion as Landce Naik, but the Commandant again passed an order on 17.06.1993, medically invalidating the petitioner from service on the basis of the very same report of the Medical officer.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

(d) Aggrieved by the said action, the petitioner filed two writ petitions in W.P.Nos.21734 and 21735 of 1993. Both the writ petitions were allowed by order dated 07.03.1997 and a direction was issued to file an appeal before the Deputy Inspector General within four weeks.

(e) Pursuant to the order, the petitioner made a representation on 31.03.1997. By order dated 12.11.1997, the said representation of the petitioner was considered. Thereafter, the petitioner joined duty on 01.12.1997. However, while passing the order, the 1st respondent also stated that it was proposed to regularise the intervening period from the date of the earlier invalidation i.e.17.06.1993 to the date of reinstatement in service as Dies Non. In the same order, the petitioner was given an opportunity to make a representation against the above proposal within a period of 15 days after reporting to the Unit.

(f) Pursuant to the same, the petitioner submitted his representation on 10.12.1997, but by order dated 13.02.1998, the earlier proposal was confirmed and the intervening period from the date of medical invalidation to the date of reinstatement was treated as Dies Non. Aggrieved by the above said order, the petitioner has filed the above writ petition.

3. The respondents filed a counter affidavit highlighting their stand. After furnishing several details, it is stated that the writ petition was filed on a misconception and prayed for dismissal of the same.

4. In the light of the above pleadings, we heard the learned counsel for the petitioner as well as the respondents.

5. The only point for consideration in this writ petition is whether petitioner is entitled to the relief as claimed in the writ petition ?

6. Learned counsel appearing for the petitioner, by drawing our attention to Rule 49-A of the Central Industrial Security Force Rules, 1969, submitted that the action taken by the respondents is contrary to the said provision. According to him, inasmuch as he was neither dismissed or removed nor compulsorily retired, as mentioned in the Special Rules treating the period, namely, 17.06.1993 to 01.12.1998 as Dies Non cannot be accepted. In order to appreciate the above contention, it is useful to refer Rule 49-A.

> "49-A Dies Non: Notwithstanding anything contained in these rules an appellate authority or a revising authority may, on reinstatement of a member of the Force in service after setting aside a penalty of dismissal, removal or compulsory retirement without exonerating such member of the Force of the charges which resulted in any of those penalties, after giving any opportunity to the member of the Force concerned to show cause against such action and for reasons to be recorded in writing, order that the intervening period between the date of dismissal, removal or compulsory retirement as the case may be and the date of reinstatement be treated as dies non for purposes of his service".

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

7. It is not in dispute that the petitioner was charged for any misconduct in terms of the Service Rules applicable to him. No doubt, at the first instance, he was medically invalidated due to the disability suffered. The said order was set aside by this Court. It is also not in dispute that by subsequent order, the petitioner underwent before the Medical Board on second occasion. It is further not in dispute that this time, he was found medically fit to continue in service. As rightly pointed out by the learned counsel appearing for the petitioner, for the earlier orders passed or action taken by them, the petitioner cannot be penalised. Even otherwise, the only Rule, which speaks about Dies Non, refers only three categories, namely, (a) dismissal, (b) removal, (c) compulsory retirement. It is true that during the above mentioned period, he was not in service. However, as observed earlier, petitioner was no way responsible for the same. The Rule refers only three circumstances and admittedly, there is no reference about medical invalidation. As rightly pointed out by the learned counsel for the petitioner, whether a power is given to do a certain thing in a certain way, the same must be done in that way and deviation to the same is prohibited. This position has been explained by the Supreme Court in Ramchandra ..vs.. Govind (AIR 1975 SC 915) vide para 25.

8. No doubt, the learned counsel appearing for the respondents relied on two decisions of the Supreme Court, namely, A.P.SRTC and another ..vs.. S.Narasagoud (2003 (2) SCC 212) and A.P.SRTC ..vs.. Abdul Kareem (2005(6) SCC 36). A perusal of the above mentioned decisions clearly show that the employee concerned in those two cases was found guilty of unauthorised absence. That is not the position in our case. In such circumstances, we are of the view that both the decisions are not helpful to the stand of the respondents.

9. In the light of the factual details as mentioned above and in view of the existing Rule, namely, 49-A of CISF Rules, 1969, we are satisfied that the impugned proceedings of the 1st respondent cannot be sustained. Accordingly, the said proceedings dated 13.02.1998 is quashed. Direction is issued to the 1st respondent to treat the period of medical invalidation from 17.06.1993 to 01.12.1998 as period spent on duty with all consequential benefits and the same shall be finalised within a period of three months from the date of receipt of a copy of this order.

Writ petition is allowed. No costs.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

gl

To

1. Deputy Inspector General,
   Southern Zone,
   Central Industrial Security Force,
   'D' Block, Rajaji Bhavan,
   Besant nagar,
   Chennai-90.

2. The Commandant,
   Central Industrial Security Force,
   Madras Port Trust,
   Chennai-600 001.

+ 1 CC To Mr. R.Parthiban, Advocate SR NO. 60736

+ 1 CC To Mr. S.Udayakumar, Advocate SR NO. 60825

Writ Petition No.5300 of 1998

ka[co]
Gp/18.12.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/